

No. 12473

United States
Court of Appeals
For the Ninth Circuit.

MONTE L. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

APR 5 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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The Tax Court of the United States

T. C. Docket No. 14,278

MONTE L. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions the above entitled court for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency, (symbols IT:90D:DLA) dated March 4, 1947, and as a basis of his proceeding alleges as follows:

I.

The petitioner, an individual, residing at 3410 S. E. Woodstock Boulevard, Portland, Oregon, is one of three equal transferees of the residuary estate of Jennie Wolf, deceased. The returns for the periods here involved were filed by Jennie Wolf with the Collector for District of Oregon.

II.

The Notice of Deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner from Seattle, Washington, under date of March 4, 1947.

III.

The taxes in controversy are income taxes for the calendar years 1942 and 1943, and the amount in controversy does not exceed \$42,273.99, which sum is equal to the amount of deficiency asserted. The petitioner contends that at all times during the calendar years 1942 and 1943, Jennie Wolf was a partner in The Alaska Junk Company with an interest therein equal to that of her husband, Harry J. Wolf. Said partnership interest of Jennie Wolf is in issue before this Court in the appeal hereinafter mentioned, and in the event this Court in said appeal should determine that Jennie Wolf was not such partner during said calendar years, the petitioner claims that he is entitled to a refund of \$12,316.99 which is one-third of the amount of \$36,950.97 paid by said Jennie Wolf within three years of the mailing of said Notice of Deficiency as income and victory taxes on account of her distributive share of the net income of said partnership for the calendar years of 1942 and 1943.

IV.

The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing as a deduction of The Alaska Junk Company in the calendar year 1943 the sum of \$202,350.60 as (1) a bad debt owed to The Alaska Junk Company by the Oregon Electric Steel Rolling Mills which be-

came worthless in said calendar year, or (2) as a loss deductible under the provisions of Sec. 23 (e), I.R.C.

(b) The Commissioner erred in including an additional \$50,587.65 in the Income Tax Net Income and Victory Tax Net Income of said Jennie Wolf for the calendar year 1943 as a result of his said disallowance of the said sum of \$202,350.60 as a deduction of The Alaska Junk Company for said calendar year.

V.

The facts upon which the petitioner relies as the basis of this proceeding are as follows:

Re Bad Debt Loss

(a) At and during the calendar years 1942 and 1943, and for a great many years prior thereto, Sam Schnitzer, Rose Schnitzer, Harry J. Wolf and Jennie Wolf were co-partners under the names and styles of The Alaska Junk Company and Schnitzer-Wolf Machinery Company, and as such co-partners were engaged in the business of buying, selling and generally dealing in junk, new and second hand pipe, tools, machinery, hardware, metal and metal products of every character, and in promoting and financing business enterprises of a nature related to the other said activities of said partnership, and the principal place of business of said partners was in Portland, Oregon. During all said times each of the said persons owned a one-quarter interest in the business and property of said partnership, which

said partnership is hereinafter referred to as The Alaska Junk Company.

(b) At and during all the times hereinafter mentioned the Oregon Electric Steel Rolling Mills, hereinafter called the corporation, was a corporation having an authorized capital stock of 2500 shares consisting of common stock of a par value of \$100.00 each. Sam Schnitzer and Harry J. Wolf each subscribed to a portion of the capital stock, which portion was subsequently issued and thereupon immediately reissued so as to divide it equally among said four partners. Thereafter additional stock was issued in substantially equal amounts to each of the four partners. Said corporation was fully paid for all said stock. The balance of the issued stock of said corporation was owned by other persons, Morris Schnitzer, son of Sam Schnitzer and Rose Schnitzer, owned all of the said balance except three shares.

(c) Said Morris Schnitzer at and during all times hereinafter mentioned was engaged in Portland, Oregon, in the business of buying and selling new and used iron, steel, tools and machinery and conducted such business under the name and style of the Schnitzer Steel Products Co.

(d) In the course of its business The Alaska Junk Company between October 22, 1941, and November 22, 1943, on an open account, at the instance and request of said corporation, advanced money to said corporation, either directly or by making payments on its account to its creditors,

purchased and furnished it with merchandise charging the cost thereof to it, and sold goods, wares and merchandise to it at the regular prices charged by The Alaska Junk Company to the trade in general. On November 26, 1943, the balance due and owing to The Alaska Junk Company from said corporation on said open account was \$428,132.13.

(e) In consideration of said open account being credited with the sum of \$174,000.00 the said corporation made, executed and delivered to The Alaska Junk Company one hundred seventy-four (174) First Debentures (unsecured) in the total amount of \$174,000.00, bearing interest at 8% per annum, and on July 14, 1943, said Alaska Junk Company credited said open account with said amount of \$174,000.00, and charged its "Stocks and Bonds" account with a like sum. For a valuable consideration seventy-five (75) such debentures in the sum of \$75,000.00 were also executed and delivered by said corporation to Morris Schnitzer. No payments of either principal or interest were ever made on any of said debentures.

(f) Soon after the organization of said corporation, The Alaska Junk Company and Morris Schnitzer entered into a contract of guaranty whereby it was agreed that in the event a loss should be sustained by The Alaska Junk Company as a result of its extending credit to said corporation, Morris Schnitzer would pay to the Alaska Junk Company so much of any such loss as should exceed two-thirds of the total combined losses of

himself and The Alaska Junk Company sustained on account of the extension of credit to said corporation by himself and The Alaska Junk Company, and a corresponding guaranty was made by The Alaska Junk Company to Morris Schnitzer to the extent of one-third of the total combined losses of said parties sustained through the extension of credit to said corporation.

(g) The idea for the establishment of said corporation was conceived by Morris Schnitzer and from its inception to July 17, 1943, he acted as its president and manager. On said date he was inducted into the armed service of the United States and this left the corporation without a directing head sufficiently informed and capable of carrying out the purposes of the corporation. Extended and repeated efforts were made to secure a suitable manager to take his place. None could be found. None of the remaining stockholders of said corporation or partners of The Alaska Junk Company were able to properly manage the plant. Its operation bogged down. There was a \$678,843.70 mortgage against its real estate. It owed \$149,650.00 for which its inventories were security, and in addition to the sums it owed The Alaska Junk Company and Morris Schnitzer, it owed \$190,684.06 on open accounts. It lost money, became unable to pay its debts, and it became apparent that it would be impossible for it to carry on and operate profitably. Thereupon many industrialists of large financial ability were solicited in repeated efforts to find

some person or organization that would take over the interests of The Alaska Junk Company and Morris Schnitzer in said corporation under such terms as would save them from loss, or at least, under terms that would result in as little loss to them as possible. Including those solicited were Kenneth E. Hall and A. M. Mears, then of the Hesse-Ersted Iron Works. After extended negotiations an agreement was made by and between said Hall, Mears, The Alaska Junk Company, and Morris Schnitzer, by his attorney-in-fact, Sam Schnitzer, whereby said Hall and Mears agreed to purchase the outstanding stock of said corporation at a nominal sum and thereafter to cause said corporation to execute and deliver a promissory note to The Alaska Junk Company and Morris Schnitzer in the sum of \$249,000.00 to be secured by a second mortgage upon its properties in payment of all said debentures, and to execute and deliver a promissory note to said persons in the sum of \$151,000.00 secured by a third mortgage upon said properties in compromise and full payment of the balance due on said open account and in complete satisfaction of a debt of \$26,493.77 then due and owing from said corporation to Morris Schnitzer. The Alaska Junk Company entered into said agreement for the reason that it gave The Alaska Junk Company the best opportunity it could find to realize the greatest possible amount on the obligations owed to it by said corporation.

(h) As evidence of the correct balance due The

Alaska Junk Company on its said open account a demand promissory note in the amount of said balance was executed and delivered by said corporation to The Alaska Junk Company, and as evidence of the correct amount of said debt owed by said corporation to Morris Schnitzer a demand promissory note in the amount of said debt was executed and delivered by said corporation to Sam Schnitzer, the attorney-in-fact for Morris Schnitzer.

(i) On November 26, 1943, subsequent to the execution and delivery of the demand notes mentioned in paragraph V (h), all of the issued stock of said corporation was sold to said Hall and Mears and transferred to them or their order pursuant to the agreement mentioned in paragraph V (g); and thereafter said corporation executed and delivered promissory notes and a second and a third mortgage, and the same were accepted by The Alaska Junk Company and Morris Schnitzer, by his said attorney-in-fact, all in accordance with said agreement.

(j) Upon the receipt of said promissory note and second mortgage for the amount of \$249,000.00 all of the said debentures were returned to the said corporation as fully paid and satisfied, and The Alaska Junk Company credited its said open account with \$142,200.33, which was its pro rata share of the said promissory note and third mortgage for \$151,000.00, and pursuant to said guaranty agreement charged Morris Schnitzer with \$83,581.20 and credited said open account with an equal

amount, thereby reducing the balance of said open account to \$202,350.60, which balance became worthless within the calendar year 1943, because under the terms of the settlement with said corporation embodied in the agreement mentioned in paragraph V (g) no further amount could be realized on said unpaid balance from the corporation, and the said sum of \$83,581.20 was the entire amount for which Morris Schnitzer was liable under the said guaranty. On December 31, 1943, The Alaska Junk Company charged off the said balance as a bed debt, and nothing has since been received thereon.

(k) On account of the matters and things hereinabove stated The Alaska Junk Company sustained a bad debt or business loss in the calendar year 1943 in the sum of \$202,350.60.

(1) The Commissioner arbitrarily considered that the said unpaid and worthless balance of \$202,350.60 represented a contribution by The Alaska Junk Company to the capital of said corporation. Petitioner is informed, believes and therefore alleges that there was no intention at any time by any of the said partners that the said amount, or any portion thereof, should be a capital contribution to said corporation, but on the contrary it was the intention of The Alaska Junk Company that it was extending credit and that the full balance shown by its said open account would be repaid to it by said corporation.

Re Refund

(m) Said Jennie Wolf was the wife of said Harry J. Wolf and the mother of the petitioner, Charlotte C. Cohon and Blossom M. Goldstein. Jennie Wolf died on April 8, 1945, and left a will which was duly admitted to probate by an order of the Circuit Court of the State of Oregon for the County of Multnomah, Probate Department, made and entered on April 18, 1945, in the Matter of Estate of Jennie Wolf, Deceased, Probate No. 53,-880. By the terms of said will said Jennie Wolf directed that her funeral expenses, just debts, estate and inheritance taxes be paid, bequeathed specific articles of jewelry, household furniture, fixtures, linens, silverware, and certain specified sums of money, and then disposed of all the rest, residue and remainder of her property and estate pursuant to the eighth paragraph of said will. The second and eighth paragraphs of said will read as follows:

“Second: I have a husband named Harry J. Wolf. I have three living children, whose names and the date of their births are as follows, to wit: (1) Monte L. Wolf, who was born on April 5, 1909; and (2) Charlotte C. Cohon—nee Wolf, who was born on September 8, 1911; and (3) Blossom M. Goldstein—nee Wolf, who was born on July 8, 1919.”

“Eighth: I give and bequeath and devise all of the rest, residue and remainder of my property and estate—real and personal and mixed, and wheresoever situated and whether acquired before

or after making this Will—in equal shares to my above named three children.”

There was no person named in said will as a child of Jennie Wolf other than those named in said second paragraph, and she had no other children.

(n) Said Harry J. Wolf, was duly appointed the executor of said will and estate, qualified as such, and administered the estate. He filed his final account, which was duly approved and distribution was ordered by said Court on March 29, 1946. Distribution was thereupon made of all the property and estate of said Jennie Wolf, deceased, that remained in the hands of said executor, and by order of said Court duly made, entered and effective on April 1, 1946, the administration of said estate was fully and completely closed and Harry J. Wolf was discharged and released as executor of said estate. There has been no executor of said will or estate or personal representative of said Jennie Wolf, Deceased, since the date last mentioned; and petitioner is informed, believes and therefor alleges that under the law and practice of the State of Oregon said Harry J. Wolf, by virtue of the order last mentioned, was on said date completely and forever divested of any and all right, power or authority to in any way further act for or on behalf of the said estate which was at the same time fully and completely closed as aforesaid.

(o) The petitioner is informed, believes and therefor alleges that in determining the taxable income of said Harry J. Wolf for the calendar years

1942 and 1943 the Commissioner refused to recognize that Jennie Wolf was a partner during said calendar years in the said business carried on under the name of The Alaska Junk Company with an interest therein equal to that of Harry J. Wolf, although the Commissioner had recognized her as such a partner for many years prior thereto, and that based on his said refusal to recognize her as such partner during said years he treated her distributive share of the net profits of said partnership for said years as income of Harry J. Wolf and determined a deficiency in the income tax liability of said Harry J. Wolf for said calendar years in the sum of \$151,049.05, and that said Harry J. Wolf has filed with the Clerk of this Court, or at least, has mailed to him for filing, an appeal to this Court wherein said Harry J. Wolf alleged that Jennie Wolf was a partner, with such interest, during said calendar years and that the Commissioner erred in refusing to recognize her as such.

(p) In the event the issue referred to in paragraph V (o) should be determined by this Court adversely to said contentions of said Harry J. Wolf, the said Jennie Wolf will have overpaid her income and victory taxes for said calendar years by the sum of \$36,950.97.

(q) All of the specific and pecuniary bequests made by said Jennie Wolf in her said will were paid in full, and the entire amount of said sum of \$36,950.97 was paid on said income and victory taxes in diminution of the interests of petitioner, said

Charlotte C. Cohon and Blossom M. Goldstein as the residuary legatees under said will of said Jennie Wolf, deceased; and in the event of such an adverse determination on said partnership issue, petitioner as a transferee of said Jennie Wolf would be entitled to a refund of one-third of the resultant overpayment as his portion thereof, to wit: he would be entitled to a refund of \$12,316.99.

(r) None of the foregoing allegations are in any way intended as an admission that the Commissioner was correct in his refusal to recognize said partnership interest of Jennie Wolf, and paragraphs (m) through (q) are included herein only to protect the petitioner's interests as a claimant in the event this Court should determine said partnership issue in said appeal adversely to the interests of Harry J. Wolf.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that Jennie Wolf paid her taxes in full for all years in question and that there is no deficiency in her income and/or victory taxes due from petitioner for said years, and petitioner further prays that this cause not be determined by this Court prior to its determination of said partnership issue in said appeal of Harry J. Wolf, and if said issue is determined adversely to the interests of said Harry J. Wolf, then and in such event, that this Court determine that Jennie Wolf made an overpayment of her income and victory taxes for the calendar years in question in the sum of \$36,950.97, and that

she paid the same within three years prior to the mailing of said Notice of Deficiency, and that the petitioner's share in such overpayment, if an overpayment is determined, is \$12,316.99, together with interest thereon as provided by law, and petitioner also prays for such further relief as may be just and proper in the premises.

/s/ ROBT. T. JACOB,

Counsel for Petitioner.

State of Oregon,

County of Multnomah—ss.

Monte L. Wolf, being first duly sworn, says that he is the petitioner above named, that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and those he believes to be true.

/s/ MONTE L. WOLF.

Subscribed and sworn to before me this 26th day of May, 1947.

[Seal] /s/ J. F. JOHNSON,

Notary Public for Oregon.

My Commission expires: March 28, 1951.

Exhibit A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

March 4, 1947.

Office of Internal Revenue Agent in Charge, Seattle Division, 305A 1331 Third Avenue Building.

IT:90D:DLA

Mr. Monte L. Wolf
3410 S. E. Woodstock Blvd.
Portland, Oregon

Dear Mr. Wolf:

You are advised that the determination of the income tax liability of the Estate of Jennie Wolf, deceased, 900 S. W. First Avenue, Portland, Oregon, for the taxable year ended December 31, 1943, discloses a deficiency of \$42,273.99, as shown in the statement attached. The amount of the deficiency stated, plus interests as provided by law, constituting your liability as transferee of assets of said Estate of Jennie Wolf, deceased, will be assessed against you.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this

letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington for the attention of IT:90D:DLA. The signing and filing of this form will expedite the closing of the return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ S. R. STOCKTON,
Internal Revenue Agent in
Charge.

DLA:mts

Enclosures:

Statement

Form of waiver

IT:90D:DLA

Monte L. Wolf, Transferee

Statement

Estate of Jennie Wolf, Deceased, Transferor

900 S. W. First Avenue

Portland, Oregon

Tax liability for the taxable year ended December 31, 1943

Monte L. Wolf, Transferee

3410 S. E. Woodstock Blvd.

Portland, Oregon

	Deficiency
Income tax	\$ 42,273.99

The records of this office indicate that assets of the above-named decedent's estate were transferred to you on or about April 1, 1946.

The above-stated amount represents your liability as a transferee of assets of the Estate of Jennie Wolf, deceased, 900 S. W. First Avenue, Portland, Oregon, for a deficiency in income tax due from the Estate of Jennie Wolf, deceased, for the taxable year ended December 31, 1943.

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	\$ 52,654.75	\$ 56,514.91
Unallowable deductions and additional income:		
(a) Income from partnership	50,587.65	50,587.65
Net income adjusted	\$103,242.40	\$107,102.56

Explanation of Adjustments

(a) It is held after examination of the 1943 return filed by the partnership, Alaska Junk Co., that the distributive share of Jennie Wolf, deceased, of the income from that partnership was \$107,101.58. Reported on the return, \$56,513.93. Additional income from partnership, \$50,587.65.

Computation of Income and Victory Tax

Income tax net income, adjusted	\$103,242.40
Less: Personal exemption	None
<hr/>	
Surtax net income	\$103,242.40
Less: Earned income credit	300.00
<hr/>	
Balance subject to normal tax	\$102,942.40
<hr/>	
Normal tax at 6% on \$102,942.40	\$ 6,176.54
Surtax on \$103,242.40	61,701.50
<hr/>	
Total income tax	\$ 67,878.04
<hr/>	
Victory tax net income adjusted	\$107,102.56
Less: Specific exemption	624.00
<hr/>	
Income subject to victory tax	\$106,478.56
<hr/>	
Victory tax before credit, 5% of \$106,478.56	\$ 5,323.93
Less: Victory tax credit	500.00
<hr/>	
Net victory tax	4,823.93
<hr/>	
Net income tax and victory tax	\$ 72,701.97
<hr/>	
Income tax for 1942	\$ 26,091.94
<hr/>	
Amount of net income tax and victory tax	\$ 72,701.97
Forgiveness feature:	
(a) Amount of income tax for 1942....	\$ 26,091.94
(b) Amount forgiven ($\frac{3}{4}$ of (a)).....	19,568.95
<hr/>	
(c) Amount unforgiven	6,522.99
<hr/>	
Total income and victory tax liability.....	\$ 79,224.96
Income and victory tax liability disclosed by return	
Account No. 353534	36,950.97
<hr/>	
Deficiency of income tax	\$ 42,273.99

Received and filed May 29, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Acting Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, denies and alleges as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits that the taxes in controversy are, in part, income taxes for the calendar years 1942 and 1943; that the amount of the taxes so in controversy, exclusive of interest as provided by law, is, to wit: \$42,273.99, and that the alleged partnership interest of the decedent, Jennie Wolf, in the business known and carried on under the name of Alaska Junk Company during the years 1942 and 1943 is in controversy before this Court. Denies the remaining allegations contained in paragraph III of the petition, but admits that petitioner makes the contentions as set forth in said paragraph. Alleges that said amount of, to wit: \$42,273.99, consists, in part, of victory tax for the year 1943; that the income tax liability of the decedent, Jennie Wolf, for the year 1942, is involved in this proceeding only by reason of the forgiveness feature of section 6 of the Current Tax Payment Act of 1943; that no part of the defi-

ciency in income and victory tax as determined by respondent to be due from petitioner's transferor, the Estate of Jennie Wolf, Deceased, for the taxable year 1943, in the amount of, to wit: \$42,273.99, arises out of or is attributable to any adjustment made by respondent to or in respect of the net income as reported by petitioner's said transferor and/or said transferor's decedent, Jennie Wolf, for the taxable year 1942, and that the alleged partnership interest of the decedent, Jennie Wolf, in the business known and carried on under the name of Alaska Junk Company during the years 1942 and 1943 is in issue before this Court in the related proceedings entitled Harry J. Wolf, Docket No. 14209, and Sam Schnitzer, Docket No. 14278; also, in the related transferee proceedings entitled Blossom M. Goldstein, Docket No. 14279, and Charlotte C. Cohon, Docket No. 14280.

IV (a) and (b). Denies that he erred in his determination of the deficiency shown by the notice of deficiency from which petitioner's appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV (a) and (b) of the petition.

V (a). Denies the allegations contained in paragraph V (a) of the petition, except to the extent that in the event the decisions of this Court in the pending related cases of Harry J. Wolf, Docket No. 14209, and Sam Schnitzer, Docket No. 14208, should be adverse to respondent, i.e., the Court's decisions in those cases should be predicated upon his find-

ing and holding by said Court that the decedent, Jennie Wolf, was, during the taxable years 1942 and 1943, a valid and bona fide partner in the business known and carried on under the name of Alaska Junk Company, and said decisions shall have become final, then and in that event, and upon that condition only, the respondent admits the allegations contained in said paragraph V (a) of the petition.

(b) to (j), inclusive. For lack of sufficient information or knowledge upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V (b) to (j), inclusive, of the petition.

(k) Denies the allegations contained in paragraph V(k) of the petition.

(l). Admits that he, the Commissioner, considered the balance of \$202,350.60 as a capital investment. Denies the remaining allegations contained in paragraph V(1) of the petition.

(m). Admits the allegations contained in paragraph V(m) of the petition.

(n). Admits the allegations contained in paragraph V(n) of the petition, except that it is denied that said Harry J. Wolf is now divested of any right, power or authority to act for and on behalf of said estate.

(o). Admits that he, the Commissioner, in determining the taxable income of said Harry J. Wolf, for the calendar years 1942 and 1943, refused to recognize that Jennie Wolf was a part-

ner during said calendar years in the business carried on under the name of Alaska Junk Company with an interest therein equal to that of Harry J. Wolf; that based on his said refusal to recognize the decedent, Jennie Wolf, as such partner during said years, he treated her alleged distributive share of net profits of said business for said years as income of Harry J. Wolf and determined a deficiency in the income and victory tax liability of said Harry J. Wolf for the year 1943 in the amount of, to wit: \$151,049.05; and that said Harry J. Wolf has filed with this Court his petition, at Docket No. 14209, as aforesaid, wherein he alleged that the decedent, Jennie Wolf, was a partner, with such interest, during said years, and that the Commissioner erred in refusing to recognize her as such. Denies the remaining allegations contained in paragraph V(o) of the petition.

(p). Admits that in the event the issue referred to in paragraph V(o) of the petition, which said issue is presented in the pending proceeding entitled Harry J. Wolf, Docket No. 14209, as aforesaid, should be determined by this Court adversely to the contentions of said Harry J. Wolf, the decedent, the said Jennie Wolf, will have overpaid her income and victory tax for the year 1943. For lack of sufficient information or knowledge upon the basis of which to form a belief as to the truth or falsity thereof, denies the remaining allegations contained in paragraph V(p) of the petition.

(q). Admits that all of the specific and pecu-

niary bequests made by said Jennie Wolf in her said will were paid in full. Denies the remaining allegations contained in paragraph V(q) of the petition.

(r). Because of the absence of any allegation of fact therein, respondent neither admits nor denies the statements set forth in paragraph V(r) of the petition.

VI. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified, or denied.

VII. For further answer to the petition herein, respondent alleges as follows:

(a). That the taxpayer, namely: Jennie Wolf, now deceased, and formerly of Portland, Oregon, from whom respondent determined the deficiency involved in this proceeding to be due, died on, to wit: April 8, 1945, a resident of the State of Oregon; that said decedent died testate; that said decedent's will was duly admitted to probate by order of the Circuit Court of the State of Oregon for the County of Multnomah, Probate Department, made and entered April 18, 1945.

(b). That by the terms of said will, said decedent directed payment of all expenses and debts, made specific bequests and then disposed of all the rest, residue and remainder of her property and estate, pursuant to paragraph eight (8) of said will. The second and eighth paragraphs of said will read as follows:

"Second: I have a husband named Harry J. Wolf; I have three living children, whose names and the date of their births are as follows, to wit: 1) Monte L. Wolf, who was born on April 5, 1909; and (2) Charlotte C. Cohon—nee Wolf, who was born on September 8, 1911; and (3) Blossom L. Goldstein—nee Wolf, who was born on July 8, 1919.

* * *

"Eighth: I give and bequeath and devise all of the rest, residue and remainder of my property and estate—real and personal and mixed, and wheresoever situated and whether acquired before or after making this Will—in equal shares to my above named three children."

(c). That the petitioner herein is one of the three children mentioned in paragraph eight (8) of said will as a residuary legatee.

(d). That a final account by the duly appointed and authorized executor of the Estate of Jennie Wolf, Deceased, was filed with the said court on March 29, 1946, and was duly approved, and distribution was ordered by said court on March 29, 1946.

(e). That pursuant to the order of said court above referred to, distribution was thereupon made of all the property and estate of said Jennie Wolf, Deceased, that remained in the hands of said executor and by order of said court duly made, entered and effective on April 1, 1946, the administration of said estate was fully and completely closed

and said executor was discharged and released as executor of said estate.

(f). That the distribution in accord with the terms of the will of said decedent, and pursuant to said order of said court, has the effect of rendering the Estate of Jennie Wolf, Deceased, insolvent.

(g). That the deficiency in income tax involved in this proceeding for the taxable year 1943, in the amount of \$42,273.99, has not been paid, and that the same is now due and owing to the United States, together with interest thereon, as provided by law.

(h). That at the time of her death, testate, on, to wit: April 8, 1945, as aforesaid, the decedent, Jennie Wolf, was the owner of property and assets of the then fair market value in excess of the deficiency in income tax involved in this proceeding, together with interest thereon as provided by law.

(i). That by reason of paragraph eight (8) of the said will of decedent, as aforesaid, the petitioner herein was one of the three legatees of the decedent and distributees of the assets of the estate of said decedent; that as such legatee and distributee, there were distributed to the petitioner, on or about April 1, 1946, assets and property of the decedent and of the decedent's estate of a then fair market value in excess of the amount of the deficiency and/or tax liability involved in this proceeding, together with interest thereon as provided by law.

(j). That by reason of the premises, the peti-

itioner herein became and is now liable as a transferee of the property of the taxpayer, Jennie Wolf, Deceased, and has become and is now answerable to the extent of the amount of said deficiency in income tax, together with interest thereon as provided by law.

Wherefore, it is prayed that petitioner's appeal be denied; that the respondent's determination be approved; and that the petitioner herein be held to be liable at law or in equity as a transferee of the assets of the taxpayer, Jennie Wolf, Deceased.

/s/ CHARLES OLIPHANT, JHP
Acting Chief Counsel, Bureau
of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

JOHN H. PIGG,
R. G. HARLESS,
Special Attorneys,
Bureau of Internal Revenue.

Received and Filed Aug. 7, 1947.

[Title of Tax Court and Cause.]

REPLY

The above-named petitioner, for reply to the allegations affirmatively set out by the respondent in his answer, admits, denies and alleges as follows:

VII(a). Admits the allegations contained in paragraph VII(a) of the answer, except the petitioner denies that the deficiency involved in this proceeding is or was due from Jennie Wolf, Deceased.

(b) and (c). Admits the allegations contained in paragraph VII(b) and VII(c) of the answer.

(d). Denies that the final account mentioned in paragraph VII(d) of the answer was filed on March 29, 1946. Alleges it was filed on February 27, 1946. Admits all the remaining allegations mentioned in said paragraph.

(e). Admits the allegations contained in paragraph VII(e) of the answer.

(f). Admits that the distribution mentioned in paragraph VII(f) of the answer was had in accord with the terms of the will of Jennie Wolf, Deceased, and pursuant to the order referred to in said paragraph, and that said distribution left the Estate of Jennie Wolf, Deceased, without assets. Denies all the remaining allegations contained in said paragraph of the answer.

(g). Admits that the deficiency in income tax involved in this proceeding for the taxable year 1943, in the amount of \$42,273.99, has not been paid. Denies all the remaining allegations contained in

paragraph VII(g) of the answer, and particularly denies that the amount of \$42,273.99 or interest thereon, or any other amount or interest thereon is now due and owing to the United States on account of the matters or taxes in controversy in this proceeding.

(h). Admits the allegations contained in paragraph VII(h) of the answer, except petitioner denies that any deficiency or interest thereon in the income tax involved in this proceeding is due or owing to the United States.

(i). Admits that by reason of paragraph eight (8) of the will of the decedent, Jennie Wolf, the petitioner herein was one of the three legatees of said decedent and distributees of the assets of the estate of said decedent; that as such legatee and distributee, there were distributed to the petitioner, on or about April 1, 1946, assets and property of the decedent and of decedent's estate. Denies all the remaining allegations contained in paragraph VII(i) of the answer, except as in this paragraph next alleged. Alleges that the fair market value as of April 1, 1946, and the appraised value of the said assets and property so distributed to petitioner was in the sum of \$26,534.44 and did not exceed said sum.

(j). Denies the allegations contained in paragraph VII(j) of the answer, and particularly denies that the petitioner is liable as a transferee of the property of the taxpayer, Jennie Wolf, Deceased, and has become or is now answerable to the extent of the amount of the alleged deficiency.

in income tax, together with interest thereon or in or to any other amount or interest thereon.

VIII. Denies generally and specifically each and every material allegation contained in paragraphs VII(a) to (j), inclusive, of respondent's answer, not hereinbefore especially admitted, qualified or denied.

Wherefore, the petitioner prays that the respondent's determination be disapproved, that the prayer in the answer be denied, and that the prayer in the petition be granted.

/s/ ROBT. T. JACOB,

Counsel for Petitioner.

State of Oregon,

County of Multnomah—ss.

Monte L. Wolf, being first duly sworn, says that he is the petitioner above named, that he has read the foregoing reply and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and those he believes to be true.

/s/ MONTE L. WOLF.

Subscribed and sworn to before me this 10th day of November, 1947.

[Seal] /s/ J. H. JOHNSON,

Notary Public for Oregon.

My Commission expires: 3/28/51.

[Lodged]: Nov. 19, 1947.

Filed Nov. 20, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

MOTION FOR ORDER GRANTING PERMISSION TO AMEND PETITION

Comes now the petitioner in the above entitled cause by Robt. T. Jacob, his counsel of record, and moves the Court for an order permitting him to amend his petition by adding to paragraph V of said petition immediately after sub-paragraph (a) of paragraph V a sub-paragraph to be designated (a.1) in form and substance as follows:

(a.1) During the year 1944 said Jennie Wolf instituted proceedings in the Tax Court of the United States against the Commissioner of Internal Revenue by filing in said court a petition, docket number 6263, appealing from a purported deficiency in income taxes for the calendar year 1941, in which petition said Jennie Wolf, as the petitioner therein, among other things, alleged:

“(a) Petitioner is a member of the partnership of Alaska Junk Company, which said partnership is composed of four individuals, H. J. Wolf, Mrs. J. Wolf, S. Schnitzer and Mrs. R. Schnitzer, each owning a one-fourth interest therein.”

The Commissioner of Internal Revenue filed his answer to said petition in said court and in his answer admitted the above quoted allegation. Docket numbers 6262, 6264 and 6265 were similar proceedings instituted respectively by Harry J. Wolf, Sam Schnitzer and Rose Schnitzer, and in the petitions in each of these dockets there was an allegation

similar to the one above quoted, and in the answer to each said petition the Commissioner admitted said allegation. Thereafter the said proceeding docket number 6263, and the related dockets 6262, 6264 and 6265 were consolidated for trial and tried by the said Tax Court of the United States, and on or about the 23rd day of December, 1946 the said Tax Court of the United States made and entered findings of fact and its opinion, in which findings of fact the said court found:

“The petitioners are husbands and wives and members of a co-partnership, doing business under the firm name and style of Alaska Junk Company at Portland, Oregon. Each petitioner had a one-fourth interest in the firm. They filed individual income tax returns with the collector of internal revenue for the district of Oregon.

The partnership, Alaska Junk Company, was originally organized by petitioners, H. J. Wolf and S. Schnitzer, in 1911. Its business was the buying and selling of all sorts of salvage metals and materials. The original partnership continued until 1925 or 1926 when the wives of the partners, petitioners Jennie Wolf and Rose Schnitzer, were taken into the firm. That partnership is still in existence except that petitioner Jennie Wolf, the wife of H. J. Wolf, died in April 1945.”

On or about the 24th day of September, 1946 the said Court entered its decisions in each of the said causes and each of the said decisions, less formal parts, date, seal and signature, is as follows:

“Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered Sept. 23, 1946, it is

Ordered and Decided: That there is no deficiency in income tax for the calendar year 1941.”

That the findings and decision in docket 6263 was a final adjudication in favor of said Jennie Wolf and against the Commissioner of Internal Revenue. The interest of Sam Schnitzer, Rose Schnitzer, Harry J. Wolf and Jennie Wolf in said Alaska Junk Company were exactly the same in the calendar years 1942 and 1943 as in the year 1941, and the fact that each of the said persons has said interests in said partnership during said years has become *res judicata* and the Respondent ought to be and is estopped to deny the same.

/s/ ROBT. T. JACOB,
Counsel for Petitioner.

Granted June 10, 1948.

/s/ LUTHER A. JOHNSON,
Judge.

Filed June 10, 1948, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER TO AMENDMENT TO PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the amendment to petition filed by the above-named petitioner admits and denies as follows:

V-(a.1). Admits the allegations contained in subparagraph (a.1) of paragraph V of the petition except those contained in the last two sentences thereof which are denied.

/s/ CHARLES OLIPHANT,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel;

JOHN H. PIGG,

LEONARD A. MARCUSSEN,

Special Attorneys,

Bureau of Internal Revenue.

Served July 29, 1948.

Received and filed July 28, 1948, T.C.U.S.

The Tax Court of the United States
Washington

Docket No. 14278

MONTE L. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to Opinion of the Tax Court promulgated July 14, 1949, the respondent filed a computation on October 6, 1949, and the petitioner, on November 7, 1949, filed an acquiescence in the computation as filed by the respondent. Now, therefore, it is

Ordered and Decided: That there is a deficiency in income and victory tax due from this petitioner for the calendar year 1943 in the amount of \$42,273.99.

/s/ LUTHER A. JOHNSON,
Judge.

Entered Nov. 9, 1949.

Served Nov. 10, 1949.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 14278

MONTE L. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR REVIEW

Comes now the petitioner, by his attorneys of record, and respectfully shows this Honorable Court:

I.

The petitioner is an individual residing at 3410 S. E. Woodstock Boulevard, Portland, Oregon, and is one of three equal transferees of the residuary estate of Jennie Wolf, deceased. The return for the period here involved was filed by Jennie Wolf with the Collector of Internal Revenue for the District of Oregon.

II.

The respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States and is hereinafter referred to as the "Commissioner."

III.

The taxes in controversy are income and victory taxes for the calendar year 1943.

IV.

Nature of Controversy

For many years prior to and during the taxable year before the court Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf were doing business as copartners under the name and style of Alaska Junk Company. During the years 1942 and 1943 Alaska Junk Company was engaged in the business of buying, selling and generally dealing in junk, pipe, tools, machinery, hardware, scrap and other metals and, as a part of its regular business, made loans and advances to customers and affiliated enterprises, always treating these loans and advances as "accounts receivable" on its books of account.

Morris Schnitzer, a son of Sam Schnitzer, was engaged in a similar business and in 1941 organized the Oregon Electric Steel Rolling Mills (hereinafter referred to as "Oregon Steel") an Oregon corporation, to manufacture steel products. The company's authorized capital was 2,500 shares having a par value of \$100.00 each, a total capital of \$250,000.00 Upon final distribution of this stock the partners of Alaska Junk Company received 1,249 shares and Morris Schnitzer 625 shares.

From October, 1941 to November, 1943 Alaska Junk Company advanced to Oregon Steel, cash \$327,870.23, paid bills of \$166,340.16 and furnished goods at market prices to the amount of \$347,341.62, making a total of \$841,552.01. All of these items

were charged on Alaska Junk Company's books as "accounts receivable" from Oregon Steel. On the books of Oregon Steel these items were entered as "accounts payable." Alaska Junk Company received payments of cash \$114,519.88, received stock of a par value of \$124,900.00 and debenture notes of a face value of \$174,000.00 making total receipts of 413,419.88, which items were credited to said accounts receivable.

Morris Schnitzer and Alaska Junk Company orally agreed that Morris Schnitzer would bear $\frac{1}{3}$ of the total loss, if any, that might be sustained by Morris Schnitzer and Alaska Junk Company from advances to Oregon Steel over and above the advances credited to stock subscriptions. Alaska Junk Company in turn agreed to bear $\frac{2}{3}$ of any such loss.

Alaska Junk Company was induced to make the advances, sell goods on credit and pay the bills of Oregon Steel upon a promise of early repayment, based upon engineering estimates of minimum earnings of \$50,000.00 per month and a production schedule to begin early in 1943.

In June, 1943 Morris Schnitzer was inducted into military service and Oregon Steel was unable to obtain competent management. As a result of this and other difficulties the operations were unsuccessful, and in November, 1943 ceased. It was then decided by the stockholders to withdraw from the enterprise, and Oregon Steel stock was then sold. Prior to the sale Oregon Steel issued Alaska Junk

Company its promissory note for \$427,843.87, the balance of its account receivable, and issued its note of \$26,829.28 to Schnitzer Steel Products Company (Morris Schnitzer). In exchange for these two notes Alaska Junk Company and Morris Schnitzer received a third mortgage note for \$151,000.00. This compromise resulted in a total loss of \$303,625.90 and by reason of the agreement between Morris Schnitzer and Alaska Junk Company, Alaska Junk Company sustained a loss of \$202,350.60, which was charged off as a bad debt.

On the partnership's return for 1943 a deduction of the \$202,350.60 was claimed as a bad debt. It is this amount which the Commissioner has disallowed as a deduction. The Commissioner's contention was upheld by the Tax Court of the United States and petitioner submits that in making its determination the Tax Court was in error.

V.

The petitioner designates the following points on which he intends to rely on appeal to the United States Court of Appeals for the Ninth Circuit from the decision heretofore entered by the Tax Court of the United States:

1. The Tax Court erred in holding that the sum of \$202,350.60 charged off as a bad debt by the partnership in which petitioner's transferror was a partner was not deductible as a bad debt in computing net income subject to taxation.

2. The Tax Court erred in holding that the sum of \$202,350.60 charged off as a bad debt by the

partnership in which petitioner's transferror was a partner was not a bad debt.

3. The Tax Court erred in holding that all of the advances, including said sum of \$202,350.60, of the partnership in which petitioner's transferror was a partner were contributions to capital.

4. The Tax Court erred in not finding and holding that all of said sum of \$202,350.60 was a loan made by the partnership in which petitioner's transferror was a partner.

5. The decision entered by the Tax Court herein is not supported by the evidence, is contrary to the evidence and is in disregard of it.

6. The Tax Court erred in determining that there was a deficiency in income and victory taxes for the calendar year 1943 due from the above named petitioner.

Wherefore, the petitioner petitions that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit; that a copy of the record on review be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing and that appropriate action be taken by said Court to review and correct the decision of the Tax Court which petitioner submits is erroneous.

/s/ ROBERT T. JACOB,

/s/ RANDALL S. JONES,

Attorneys for Petitioner.

Received and filed Jan. 4, 1950, T.C.U.S.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING OF PETITION
FOR REVIEW

To: Charles Oliphant, Chief Counsel for the Bureau
of Internal Revenue.

You will please take notice that on the 4th day
of January, 1950, the petitioner above named filed
with the Clerk of the Tax Court of the United
States at Washington, D. C. a Petition for Review
by the United States Court of Appeals for the
Ninth Circuit of the decision of the Tax Court of
the United States heretofore entered in the above
entitled proceeding.

A copy of said Petition for Review as filed is at-
tached hereto and served upon you.

/s/ ROBERT T. JACOB,

/s/ RANDALL S. JONES.

Received and filed Jan. 9, 1950, T.C.U.S.

[Endorsed]: No. 12473. United States Court of
Appeals for the Ninth Circuit. Monte L. Wolf, Pe-
titioner, vs. Commissioner of Internal Revenue, Re-
spondent. Transcript of the Record. Petition to
Review a Decision of [The Tax Court of the United
States.

Filed February 7, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

The Tax Court of the United States
Washington

[Title of Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents 1 to 13, inclusive, constitute and are all of the original papers and proceedings before The Tax Court of the United States as set forth in the "Designation of Record" except the original exhibits 1-27, incl., 28, 30, 31, 33-36, incl., 65, 66, 72-79, incl.; A-Z, AA-HH, incl., on file in my office as the original record in the proceeding and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 23rd day of January, 1950.

[Seal] /s/ VICTOR S. MERSCH,
Clerk.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 14208

SAM SCHNITZER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 14209

ESTATE OF HARRY J. WOLF, Deceased, by
MONTE L. WOLF, Administrator de bonis
non with the will annexed of said Estate,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 14278

MONTE L. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 14279

BLOSSOM M. GOLDSTEIN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

T. C. Docket No. 14280

CHARLOTTE C. COHON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

T. C. Docket No. 14372

ESTATE OF JENNIE WOLF, Deceased, by
MONTE L. WOLF, Administrator de bonis
non with the will annexed of said Estate,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MOTION TO CONSOLIDATE APPEALS

The above named petitioners on review and each of them, acting by and through their attorneys of record, hereby move this court to consolidate the above entitled proceedings for purposes of the printed record on appeal, the briefing, the hearing,

the argument, the decision and for all other purposes connected with the final disposition of said proceedings on review.

This motion is based on the grounds that all of the above entitled proceedings were consolidated for trial below in the Tax Court, that the Tax Court made but one set of findings of fact and rendered but one opinion in connection with all of these cases, that each of these cases involves the same facts, that each of the petitioners on review was either a partner or is now the transferee of a decedent who was a partner in a partnership known as the Alaska Junk Company, that the sole question for decision concerns the deductibility of a bad debt by said Alaska Junk Company, and that the decision on this single point is determinative of the income tax liability of each of said partners or said transferees of partners who are the petitioners herein.

/s/ ROBERT T. JACOB,

/s/ RANDALL S. JONES,

917 Public Service Building,
Portland 4, Oregon.

I, Randall S. Jones, being on oath first duly sworn, depose and say:

That on the 13th day of February, 1950, I served the foregoing Motion to Consolidate Appeals upon Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, by on said day depositing a duly certified copy thereof in the United

States mails with full postage and registration charges prepaid, addressed to Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, Internal Revenue Building, Washington, D. C. Said papers were deposited in the United States mails at the Federal Post Office, S. W. Sixth and Main Streets, Portland 4, Oregon.

/s/ RANDALL S. JONES.

Subscribed and sworn to before me this 13th day of February, 1950.

[Seal] /s/ JACQUELINE MOHLAND,
Notary Public for Oregon.

My commission expires: 9-22-52.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ HOMER BONE,

/s/ WM. E. ORR,

U. S. Circuit Judge.

[Endorsed]: Filed Feb. 15, 1950.

[Title of Court of Appeals and Causes.]

STATEMENT OF POINTS ON WHICH
PETITIONERS INTEND TO RELY

The petitioners on review hereby enumerate the points on which they intend to rely on appeal and which are as follows:

1. The Tax Court erred in holding that the sum of \$202,350.60 charged off as a bad debt by the partnership in which petitioners were partners was not a bad debt and not deductible in computing the net income of said partnership and petitioners' net income subject to taxation for the taxable year 1943.

2. The Tax Court erred in holding that the total, or any amount in excess of \$125,000.00, representing bills paid for, cash advanced to, and goods sold to Oregon Electric Steel Rolling Mills by the partnership in which petitioners or their transferrors were partners, constituted a contribution to the capital of said Oregon Electric Steel Rolling Mills.

3. The Tax Court erred in not finding and holding that all and every part of said sum of \$202,350.60 was a debt owed to the partnership in which petitioners were partners.

4. The decision entered by the Tax Court herein is contrary to the law, the Tax Court's findings of fact, and the evidence; and is not supported by said findings of fact or the evidence and is in disregard of both said findings of fact and the evidence.

5. The Tax Court erred in failing to include in its findings material facts clearly established by the evidence which further show that the bills paid, cash advanced and goods sold to Oregon Electric Steel Rolling Mills constituted an indebtedness owed to the partnership.

6. The Tax Court erred in admitting respondent's exhibits O, P, Q, U, V, AA, FF, GG and HH over objections of petitioner for the reasons set forth respectively on pages 120, 121, 122, 129, 134, 137, 495, 589-591, 621 and 636, 639 and 640 of the *Report's* Transcript of the Proceedings before said court.

7. The Tax Court erred in receiving oral testimony adduced by respondent over objections of the petitioners as set forth in those portions from the Reporter's Transcript of the Proceedings before said court which the petitioners have designated for inclusion in the Printed Record.

8. The Tax Court erred in sustaining objections of the respondent to questions asked by petitioners and to oral testimony offered by petitioners, which questions, objections and rulings thereon are set forth in those portions from the Reporter's Transcript of the Proceedings before said court which

the petitioners have designated for inclusion in the Printed Record.

/s/ ROBERT T. JACOB,

/s/ RANDALL S. JONES,

917 Public Service Bldg.,
Portland 4, Oregon.

I, Randall S. Jones, being on oath first duly sworn, depose and say:

That on the 13th day of February, 1950, I served the Statement of Points on which Petitioners Intend to Rely upon Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, by on said day depositing a duly certified copy thereof in the United States mails with full postage and registration charges prepaid, addressed to Charles Oliphant, Chief Counsel, Bureau of Internal Revenue of the United States, Internal Revenue Building, Washington, D. C. Said papers were deposited in the United States mails at the Federal Post Office, S. W. Sixth and Main Streets, Portland 4, Oregon.

/s/ RANDALL S. JONES.

Subscribed and sworn to before me this 13th day of February, 1950.

[Seal] /s/ JACQUELINE MOHLAND,
Notary Public for Oregon.

My commission expires: 9-22-52.

[Endorsed]: Filed Feb. 15, 1950.

